

free end to the hinged end to carry sound from the free end to the hinged end of the flip. The location of acoustic pipe on the peripheral edges of the flip advantageously positions the additional thickness due to the pipe on the periphery of the flip, so that the portion of the flip that covers the key pad remains thin, and the profile of the unit as a whole is aesthetically pleasing. Because the pipe is located along the peripheral edge of the flip, the main housing of the telephone may be recessed along its peripheral edge in order to accommodate the acoustic pipe when the flip is in the closed position, to thereby maintain the thin profile of the telephone.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must a reasonable expectation of success. Finally, the prior references, when combined, must teach or suggest all of the claim limitations. MPEP § 2142.

The Examiner acknowledges that "Rabe does not... expressly disclose that the acoustic channel extends entirely along one of the peripheral edges of the flip", but states it would have been obvious to modify *Rabe* to include an acoustic pipe extending entirely along a peripheral edge of the flip. However, the obvious standard requires that the Examiner can only modify or combine the art when there is some teaching, suggestion, or motivation to do so found in the references themselves or in the knowledge generally available in the art. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

The Examiner has not pointed to the necessary motivation to support the modification of the *Rabe* acoustic horn. Rather, the Examiner merely relies on the statement in *Rabe* that the acoustic horn may be "other shapes and types". This general statement does not teach the features of the present invention. In particular, *Rabe* does not expressly teach (1) an acoustic pipe and (2) that the acoustic pipe entirely extends along the perimeter of the flip. The Examiner completely ignores the fact that the acoustic horn is formed as a flared cavity, which is entirely different than an acoustic pipe. Moreover, it is this differing geometry which prevents the acoustic pipe from being *entirely disposed along the peripheral edge* of the flip. Nor does *Rabe* recognize the benefits of such a placement.

The Examiner points to no specific information in *Rabe* that would suggest the placement of an acoustic pipe extending entirely along a peripheral edge of a flip phone, as specifically recited in Claims 1 and 10. In fact, the Examiner's only support to modify *Rabe* in the manner suggested by the Examiner appears to be the instant disclosure. It is well established that the use of the application under examination as a guide for modifying the cited art constitutes impermissible hindsight, which may not be used in rejection the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q. 1566 (Fed. Cir. 1990).

For at least the reasons above, it is submitted that the claims of the present invention are patentably distinguishable over the disclosures contained in applied reference. Accordingly, withdrawal of the rejections of record and allowance of Claims 1-13 of this application are earnestly solicited.

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Should any questions arise in connection with this application, or should the Examiner believe a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that she be contacted at the number indicated below.

Respectfully submitted,

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